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# MARKETING AGREEMENTS AND ORDERS

## FOR FRUITS AND VEGETABLES

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U.S. DEPARTMENT  
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# **MARKETING AGREEMENTS AND ORDERS**

## **FOR FRUITS AND VEGETABLES**

### **PURPOSE**

Marketing agreements and orders are designed to improve returns to growers through orderly marketing. They are programs through which fruit and vegetable growers can work together to solve marketing problems that they cannot solve individually.

Early efforts by producers collectively to improve the quality of their products and balance shipments with market demand often failed because they could not get the entire industry to cooperate. In the 1930's, however, producers asked the Federal Government to give them the means to overcome this weakness, and the present Agricultural Marketing Agreement Act became law. Since then producers have had the means to accomplish these objectives through marketing agreements and marketing orders.

Under such programs, a fruit

or vegetable industry can withhold from the market poor quality produce which depresses price levels for all produce marketed. It can specify quality in certain packs or standardize containers. An industry can even out the flow of the commodity to market or permit only a certain portion of the crop to move in specified outlets. Production and marketing research and development projects can be instituted, and some industries can set up advertising and promotion programs.

### **LEGAL AUTHORITY**

Marketing agreements and orders are authorized under the Agricultural Marketing Agreement Act of 1937. This act specifies the commodities which may be covered, types of regulations which may be issued, guidelines for administering the programs, and privileges and limitations granted by Congress.



## ROLE OF PRODUCER OR PRODUCER GROUPS

Producers are usually the motivating force behind a proposed marketing order. They are prominent in developing its provisions and testifying for the program at hearings. They decide in referendum whether an order should be issued. They are prominent in marketing order administration and subsequently can determine whether an order should be continued or terminated.

## ROLE OF GOVERNMENT

The Secretary of Agriculture is

given the responsibility under the Agricultural Marketing Agreement Act for administering agreements and orders and the authority to issue regulations. Through his representatives, the Secretary works closely with industries in furnishing technical guidance and in enforcing order provisions. However, an industry normally initiates actions to be taken under an order's provisions. This is done through recommendations made to the U.S. Department of Agriculture by an industry administrative committee which the Secretary appoints.

## **DIFFERENCE BETWEEN MARKETING AGREEMENTS AND MARKETING ORDERS**

Marketing agreements and orders generally are spoken of synonymously. Rarely is a marketing agreement established without a marketing order, or an order established without an agreement. When both a marketing agreement and an order are used, their regulatory terms are identical.

A marketing agreement is issued in conjunction with a marketing order when handlers of 50 percent or more of the commodity covered have signed an agreement with the Secretary. However, the Secretary can issue a marketing order independently if the order has received the required grower approval and he finds that it is the only practical means of advancing growers' interests.

A marketing order, with or without handler approval, is binding on all handlers in the industry. A marketing agreement entered into without a companion marketing order is binding only on those handlers who sign it.

The commodities which may be regulated through marketing orders and the ways in which they may be regulated are prescribed in the Agricultural Marketing Agreement Act. No statutory limitations of these types are prescribed for marketing agreements.

## **WHAT CAN BE DONE THROUGH MARKETING ORDERS**

Several types of activities are authorized under marketing orders. Principal types are as follows :

**Regulation of Quality.** Regulating the quality that can be shipped helps to keep inferior grades of the commodity from depressing the market for the whole crop. It also benefits consumers by assuring that only the more acceptable grades and sizes are marketed. This is accomplished by establishing the minimum grade, size, or maturity of the commodity which can be shipped in regulated trade channels. Requirements may change from season to season, or within a season, as supplies and demand change.

**Regulation of Quantity.** Regulating the quantity of the commodity marketed tends to stabilize markets. This results in consumers receiving steady supplies without wide fluctuations in price. Three general methods are used to do this :

- By controlling the short-term rate of flow ;
- By allocating supplies between primary and other markets for the season ; and
- By allotting market shares among producers based upon sales during a base period.

Flow regulations are designed to avoid market gluts by stabi-

lizing the volume of shipments moving to market on a week-by-week basis during the normal marketing season. This is done by handler allotments, which restrict the amount of the commodity which handlers may ship during a given period. These allotments usually are based on the amounts currently available, or on the amounts shipped in a previous period, or a combination of the two.

Another method is handler allotments which allocate between primary and secondary markets. The "surplus" or "reserve" percentages require each handler to withhold from the primary market a uniform percentage of his supply. This "surplus" or "reserve" may be marketed in secondary outlets, the most important usually being export. Generally, this type of regulation works best with a commodity which is storable for a substantial period of time. The availability of good alternative markets is also beneficial in this type of program.

When an industry can determine the total demand for its commodity, another type of volume control program may be feasible. Programs of this type limit the quantity which handlers may purchase from, or market for, a grower. Under this type of program, each producer is allocated a share of the total quan-

tity to be sold or marketed during the year.

**Standardization of Containers or Packs.** Some marketing orders permit regulations covering the size, capacity, weight, dimensions, or pack of the containers used by the industry. This enables an industry to standardize containers and packs and eliminate deceptive containers. Some marketing orders permit pack specifications which designate size groupings of the commodity which may be packed, and require that the containers be labeled to indicate size.

**Research and Development Projects.** A provision of this type allows the industry to use marketing order funds to engage in production research, and marketing research and development projects which will improve the production, marketing, distribution, and consumption of the commodity covered. Authority for research and development projects, and marketing promotion (including paid advertising for those commodities named in the Agricultural Marketing Agreement Act) can be included only in orders that contain such regulatory provisions as those on quality and quantity.

**Unfair Trade Practices.** The terms of a marketing order may specify unfair methods of competition and unfair trade practices which may be prohibited.

**Price Posting.** Under this authority handlers may be required to file their selling prices and give advance notice before changing them. It does not permit setting a range between minimum and maximum prices.

**Marketing Information.** Detailed statistics and shipping information are needed in operating a marketing order program effectively. This information also is useful to individual growers and handlers in making their marketing decisions. Under many orders, the administrative committees are authorized to collect and summarize this information for the use of the industry.

#### **COMMODITIES COVERED**

Marketing orders for fruits, vegetables, tree nuts, peanuts, or hops may be issued with the following limitations:

- Orders on apples are limited to those grown in Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio. Orders cannot be issued for apples for canning and freezing grown in Washington, Oregon, and Idaho.
- Other than for apples as indicated above, orders on fruits

and vegetables for canning and freezing are limited to asparagus, olives, grapefruit, cherries, pears, and cranberries.

- A marketing order cannot apply to peanuts produced in more than one of the three principal production areas.
- A marketing order cannot apply to potatoes for canning, freezing, or other processing.

#### **STEPS IN DEVELOPING A MARKETING ORDER**

Developing a marketing agreement and order program takes considerable time and effort on the part of the growers, handlers, and others in an industry. The following steps are necessary before a program can be established:

- The preliminary proposal for a marketing order program is drafted by growers and handlers in an industry after they have analyzed their marketing problems and concluded that a marketing order would be of benefit. There must be solid support for a marketing program within the industry, and general agreement should be reached on the types of regulatory activities to be proposed. USDA can furnish information and technical assistance to an industry in preparing the preliminary proposal. (See list of USDA offices in this publication).

- The industry proposal is submitted to the Secretary of Agriculture, with a request for a public hearing. The request for a hearing should be signed by individuals or organizations representing a majority of the industry.
- A public hearing on the proposed marketing order must be held, usually in the area covered by the proposed program. The hearing is presided over by an administrative law judge. All evidence and testimony are taken under oath and cross-examination is permitted. Both proponents and opponents are free to present evidence in support of their positions.

The hearing is an important step in the development of a marketing order program and must be given a great deal of attention. Any order issued must be supported by substantial and reliable evidence contained in the hearing record. This record must contain an explanation of how the proposed marketing order will fit the particular conditions in the industry and how it will help to solve the industry's marketing problems. Consequently, complete and detailed preparation for the hearing is necessary. At the close of the hearing, a period of time is allowed for filing of written briefs or arguments.

- USDA issues a "recommended decision" on the proposed mar-

keting order based on the evidence presented at the public hearing.

This decision outlines the issues discussed, ways in which they may be resolved, and the provisions of a recommended marketing order if supported by evidence presented at the hearing. If the hearing evidence does not support the issuance of a program the recommended decision will so state and no marketing order will be proposed. A period of time is permitted interested parties to study the recommended decision and submit relevant comments or exceptions.

- After considering any comments or exceptions, USDA issues a final decision which contains the provisions of the marketing order.
- USDA conducts a producer referendum on the proposed order. At the same time, a marketing agreement, with the same regulatory provisions, is submitted to handlers for their signature. For those commodities requiring it, a processor referendum is also held.

After the producer referendum, votes are counted both by number of producers and volume of production represented. If two-thirds of the producers who voted—either by number or by the volume of production—approve the program, and if handlers of a

majority of the crop volume to be regulated sign the marketing agreement, then the Secretary issues a marketing agreement and order program effective for the entire industry.

### **OPERATING A MARKETING ORDER PROGRAM**

**Administrative Committees.** Every marketing order program for fruits and vegetables is operated locally by an administrative committee. The committee is made up of growers, or growers and handlers, who are nominated by the industry and appointed by the Secretary of Agriculture. Their terms of office, powers, and duties are spelled out in the marketing order.

**Financing a Marketing Order Program.** The money for local administration of a marketing order program comes from assessments on handlers. Each year the administrative committee recommends a budget and a proposed rate of assessment to the Secretary of Agriculture, who is responsible for approving the amount the committee may spend and the assessment rate. The assessment is in terms of so much per box, ton, car, or other unit of commodity handled. The committee is responsible for all expenditures, and is required to keep accurate books and records. An annual audit of the financial records of each committee is required.

**Issuing Regulations.** The effectiveness of a marketing order depends a great deal on the development of appropriate regulations. Each marketing order generally specifies the types of regulations that can be issued.

However, a few marketing orders also include specified minimum standards of quality and maturity which are to be used.

Initiating marketing order regulations is a responsibility of the administrative committee. The committee analyzes crop and market conditions before making recommendations to the Secretary. If the Secretary approves the recommendations, he issues an appropriate regulation.

**Inspection Requirements.** Inspection usually is required under a marketing order to ensure that shipments meet the quality or other requirements of the order. In most cases the inspection is performed by the Federal or Federal-State Inspection Services.

**Enforcement.** Marketing order enforcement is primarily the responsibility of the Federal Government, but the administrative committee is charged with the duty of initially investigating and reporting complaints of violation. Current violations are analyzed by USDA and then referred to the U.S. Department of Justice for prosecution.

Three types of legal action may be taken in Federal courts against a person who violates an order:

- Civil action may be brought to obtain an injunction. This forbids the handler to further violate the order, and makes him liable to contempt of court proceedings if he does so.
- Criminal action may be brought and convicted persons may be fined not less than \$50 and not more than \$500 for each violation.
- Under programs limiting volume, a civil suit may be instituted for damages. A handler may be required to pay a sum equal to the value of the product shipped in violation of the quota or allotment provisions of an order.

## **REGULATION OF IMPORTS**

The Agricultural Marketing Agreement Act provides that whenever grade, size, quality, or maturity regulations are in effect under a marketing order for specified commodities, the same or comparable regulations must be imposed on imports of the commodity. As of May 1, 1974, commodities specified were: tomatoes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, walnuts, dates (other than dates for processing), eggplants, raisins, olives (other than Spanish-style green olives), and prunes.

Import regulations apply during the same period that marketing order regulations are in effect for the domestic commodity.

When two or more orders are in effect for the same commodity produced in different areas, the Secretary of Agriculture must determine which order is more directly affected by competition from the imports and apply that order's regulation to the imports.

## **TERMINATING AN ORDER**

Whenever a majority of the growers, who also produce more than half of the crop, ask the Secretary of Agriculture to terminate an order, he must do so at the end of the then current marketing period. The Secretary also must terminate or suspend a marketing order program if he determines that it no longer carries out the declared policy of the enabling Act.

For further information or assistance on fruit and vegetable marketing orders contact one of the following USDA marketing field offices:

#### **SOUTHEASTERN STATES**

Lakeland Marketing Field Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
Florida Citrus Mutual Bldg.,  
Rms. 202-204  
302 South Massachusetts Avenue  
Lakeland, Florida 33802  
Telephone: (813) 686-6731

#### **TEXAS, NEW MEXICO, AND LOUISIANA**

McAllen Marketing Field Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
1321 N. 10th Street  
McAllen, Texas 78501  
Telephone: (512) 682-2833

#### **MOUNTAIN AND PLAINS STATES**

Denver Marketing Field Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
New Customhouse, Room 365  
721 19th Street  
Denver, Colorado 80202  
Telephone: (303) 837-3131

#### **SOUTHERN CALIFORNIA AND ARIZONA**

Los Angeles Marketing Field  
Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
417 South Hill Street, Suite 900-B

Los Angeles, California 90013  
Telephone: (213) 688-3190 or 91

#### **CENTRAL CALIFORNIA**

Fresno Marketing Field Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
1130 "O" Street, Room 3114  
Fresno, California 93721  
Telephone: (209) 487-5175

#### **NORTHERN CALIFORNIA**

Sacramento Marketing Field  
Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
2800 Cottage Way, Room E-2713  
Sacramento, California 95825  
Telephone: (916) 484-4855

#### **BAY AREA CALIFORNIA**

San Francisco Marketing  
Field Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
630 Sansome Street, Room 835  
San Francisco, California 94111  
Telephone: (415) 556-7680

#### **PACIFIC NORTHWEST**

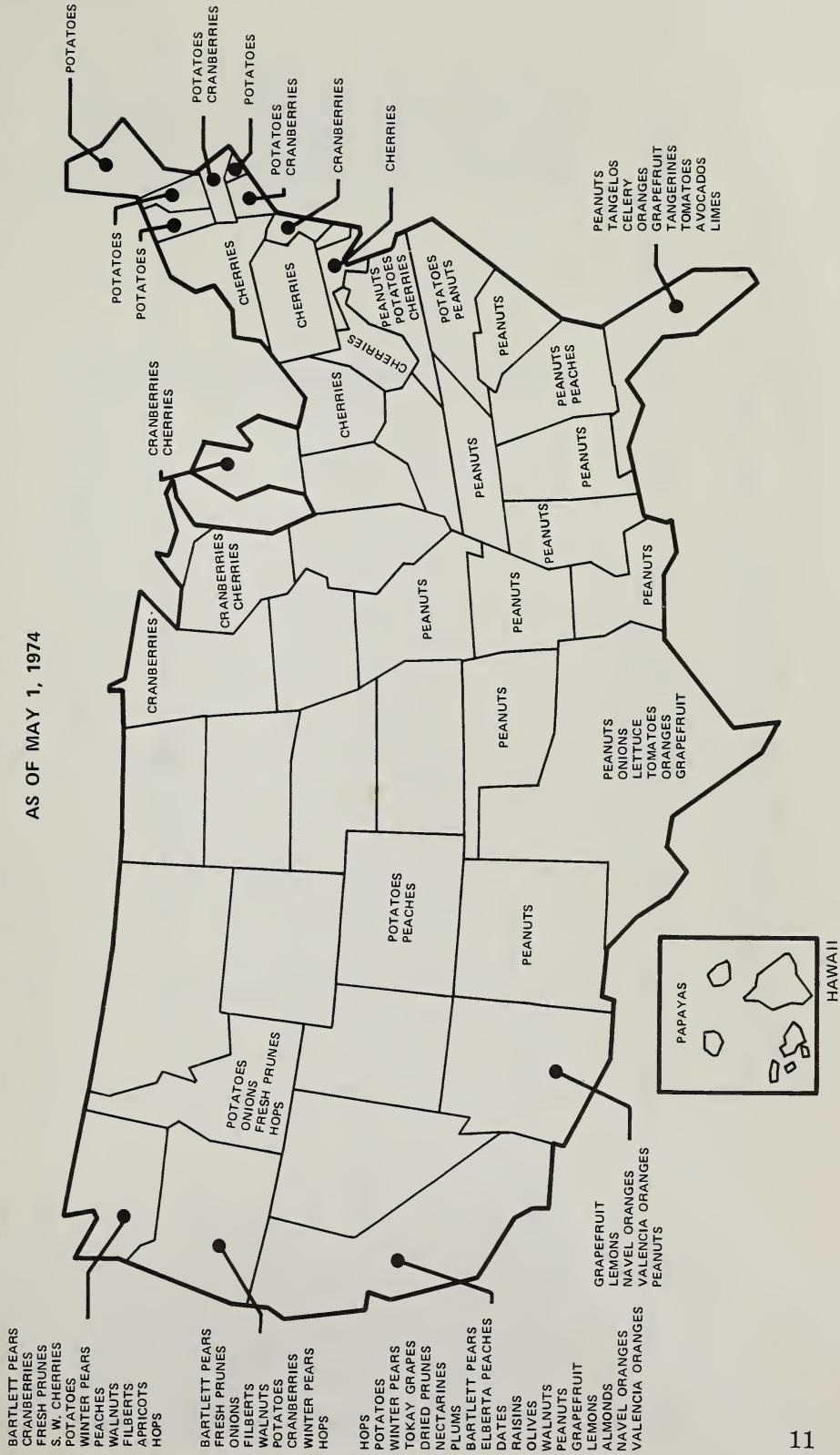
Northwest Marketing Field Office  
Fruit and Vegetable Division,  
AMS  
U.S. Department of Agriculture  
Washington Building, Room 506  
1218 S.W. Washington Street  
Portland, Oregon 97205  
Telephone: (503) 221-2724

#### **MIDWEST, MIDDLE ATLANTIC, AND NEW ENGLAND STATES**

Director, Fruit and Vegetable Division, AMS,  
U.S. Department of Agriculture, Room 2077,  
Washington, D.C. 20250. Telephone: (202) 447-4722.

# FRUIT, VEGETABLE, AND NUT FEDERAL MARKETING AGREEMENTS AND ORDERS

AS OF MAY 1, 1974



**FRUIT, VEGETABLE, AND NUT FEDERAL  
MARKETING AGREEMENTS AND ORDERS**

(As of May 1, 1974)

M.O. No.	Area and commodity	Grade	Size	Pack & container	Flow to market	Market allocation	Reserve pool	Producer allotments	Research & development	Advertising	Committee headquarters
<b>FRUITS</b>											
906	Florida Citrus Fruit	X	X	X		1			X	X	Lakeland, Florida
906	Texas Oranges & Grapefruit	X	X	X		X			X	X	Pharr, Texas
907	Calif.-Ariz. Naval Oranges	X	X	X		X			X	X	Los Angeles, Calif.
908	Calif.-Ariz. Valencia Oranges	X	X	X		X			X	X	Los Angeles, Calif.
909	Calif.-Arizona Grapefruit <sup>2</sup>	X	X	X		X			X	X	Phoenix, Arizona
910	Calif.-Arizona Lemons	X	X	X		X			X	X	Los Angeles, Calif.
911	Florida Limes	X	X	X		X			X	X	Lakeland, Florida
912	Indian River Grapefruit										Lakeland, Florida
913	Florida Interior Grapefruit										Lakeland, Florida
914	Florida Interior Oranges	X	X	X		X			X	X	Homestead, Florida
915	Florida Avocados	X	X	X		X			X	X	Sacramento, Calif.
916	California Nectarines	X	X	X		X			X	X	Palisade, Colorado
917	Calif. Pears, Plums & Peaches	X	X	X		X			X	X	Sacramento, Calif.
918	Georgia Peaches	X	X	X		X			X	X	Macon, Georgia
919	Colorado Peaches	X	X	X		X			X	X	Yakima, Washington
921	Washington Peaches	X	X	X		X			X	X	Yakima, Washington
922	Washington Apricots	X	X	X		X			X	X	Yakima, Washington
923	Washington Cherries	X	X	X		X			X	X	Yakima, Washington
924	Wash.-Oreg. Fresh Prunes	X	X	X		X			X	X	Yakima, Washington
925	Idaho-Oreg. Fresh Prunes	X	X	X		X			X	X	Parma, Idaho
926	California Tokay Grapes	X	X	X		X			X	X	Lodi, California
927	Org.-Wash.-Cali.-Winter Pears	X	X	X		X			X	X	Portland, Oregon
928	Hawaii Papayas	X	X	X		X			X	X	Hilo, Hawaii
929	10 States-Cranberries	4	4						X	X	Wareham, Massachusetts
930	Mich.-N.Y.-Wisc.-Pa.-Ohio- Va.-W.Va.-Md.—Cherries <sup>2</sup>										
931	Wash.-Oreg.-Bartlett Pears	X	X	X		X			X	X	Hartford, Michigan
932	California Olives	X	X	X		X			X	X	Portland, Oregon
											Fresno, California
<b>VEGETABLES</b>											
945	Idaho-E. Oregon Potatoes	X	X	X		X			X	X	Pocatello, Idaho
946	Washington Potatoes	X	X	X		X			X	X	Moses Lake, Wash.
947	Oregon-Calif. Potatoes	X	X	X		X			X	X	Redmond, Oregon
948	Colorado Potatoes	X	X	X		X			X	X	Monte Vista and Greely, Colorado <sup>6</sup>



